



THE CITY OF NEW YORK  
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**VIA ECF**

The Honorable Sarah L. Cave  
United States Magistrate Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: Paul Phillips, et. al. v. The City of New York, et. al., 21 Civ. 8149  
(ALC)(SLC)

Your Honor:

I am a Senior Counsel in the office of the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, representing defendant City of New York in the above referenced matter. I write in response to plaintiffs' letter submission at Docket 107 herein. To the extent that plaintiffs move to amend their complaint yet again, the City will likely oppose it. "Although Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend 'shall be freely given when justice so requires,' it is within the sound discretion of the district court to grant or deny leave to amend." McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 200 (2d Cir. 2006). (internal quotation omitted) "A district court has discretion to deny leave for good reason, including futility, bad faith, undue delay, or undue prejudice to the opposing party." Id. (citing Foman v. Davis, 371 U.S. 178, 182 (1962)). "An amendment is considered futile when the proposed new claim would not withstand a motion to dismiss under Rule 12(b)(6)." Polanco v. NCO Portfolio Mgmt., 23 F. Supp.3d 363, 369 (S.D.N.Y. 2014). I would also note that despite my request to plaintiffs for see their latest proposed amended complaint, they have to date not provided it to me.

Plaintiffs also take the position that if they amend their complaint yet again, that defendants should be limited to prior responses to previous complaints, including being limited to the motion to dismiss previously filed and pending. This is contrary to Rule 15, Fed. R. Civ., and plaintiffs provide no authority whatsoever for such a proposition. If plaintiffs are allowed to amend their complaint yet again, the City must of course be free to respond as necessary, including filing a new motion to dismiss if need be.

Thank you for your consideration herein.

Respectfully submitted,

/s/ Mark D. Zuckerman  
Mark D. Zuckerman

cc: All counsel (via ECF)